

# Legal Update

- **Elizabeth Frank**  
**Acting Director-Enforcement**  
**Office of Fair Housing & Equal Opportunity**  
**[Elizabeth\\_Frank@hud.gov](mailto:Elizabeth_Frank@hud.gov)**
- **Jana Erickson**  
**Trial Attorney**  
**Office of General Counsel-Fair Housing**  
**[Jana\\_L.\\_Erickson@hud.gov](mailto:Jana_L._Erickson@hud.gov)**

**Three Rivers Center for Independent Living v.**  
**Housing Authority of the City of Pittsburgh**  
(3<sup>rd</sup> Circuit) 382 F.3d 412 (2004)

- **Implications for Third Circuit – (PA, DE, NJ) - Limitations on plaintiffs’ private right of action to enforce Section 504**
- **Plaintiffs may enforce personal rights to access directly under Section 504**
- **Imposes affirmative obligation on HUD to enforce Section 504: “HUD retains its independent authority-indeed, its independent obligation-to enforce its own regulations after many years of the Housing Authority’s noncompliance.”**

## **Section 504 - Enforcement Perspective**

### **Compliance Alternatives - 24 C.F.R. § 8.57**

- (1) Referral to the U.S. Department of Justice [24 C.F.R. § 8.57 (a)(1)];
- (2) Initiation of debarment proceedings [24 C.F.R. § 8.57 (a)(2)];
- (3) Voluntary Compliance Agreement between recipient & HUD [24 C.F.R. § 8.56 (j)(2)];
- (4) Termination of or refusal to grant or to continue Federal financial assistance [24 C.F.R. § 8.57 (c)]

**CAVEAT: Until non-compliance findings are resolved, recipient may be ineligible to apply for discretionary funds, including application for NOFAs.**

# **Must the Department resolve via a Voluntary Compliance Agreement?**

**Short answer: YES!**

- **Department's goal: Voluntary Resolution**
- **Voluntary Compliance Agreement will include assurances that the recipient shall:**
  - **satisfactorily remedy any violations of the rights of the complainant(s); and,**
  - **assure the elimination of any Section 504 violation(s) or the prevention of the occurrence of the violation in the future.**  
*See 24 C.F.R. § 8.56(j) (2)*

# **HOUSING AUTHORITY OF BALTIMORE CITY (HABC)**

## **“Non-Voluntary” Compliance Alternative- Referral to US Department of Justice 24 C.F.R. § 8.57 (a)(1)**

- **April 2002 – Section 504 compliance review**
- **June 2002 – HUD issues Letter of Findings**
- **August 2002 – HUD & HABC commence negotiations of VCA**

# **HABC: Voluntary Compliance Agreement**

- **VCA Administrator & Section 504/ADA Coordinator**
- **Construction/conversion of minimum 5% of Total Housing Units (Approx. 700 units)**
- **Conduct Section 504 Needs Assessment**
- **Modifications to HCV program**
- **Non-Housing Program Accessibility**
- **Modifications to Policies & Procedures**
- **Employee Training**

# Section 504 Referral to DOJ

- **Failed negotiations between HUD & HABC**
- **October 2002: HUD referral to DOJ for appropriate “enforcement proceedings” under Section 504**
- **December 2004: DOJ announces Consent Decree with HABC and Maryland Disability Law Center (April 2002 private suit vs. HABC)**

# HABC Consent Decree - Highlights

## HUD's proposed Agreement plus:

- Construct/convert 6% UFAS-accessible units (755 units) plus additional 75 units for persons with physical disabilities but not wheelchair users
- Create 1,850 Voucher opportunities for non-elderly persons with disabilities
- “Enhanced Leasing Assistance Program”: \$500,000 fund for voucher holders with disabilities to make physical modifications to privately-owned apartments



# **HABC – Monetary Damages**

**\$1,000,000 – victims' fund**

**\$39,000 – private MDLC plaintiffs**

**\$300,000 – attorneys' fees**

**HABC's Consent Decree:**

**U.S. Department of Justice/Housing & Civil Enforcement Section**

**<http://www.usdoj.gov/crt/housing/documents/bhasettlesum.htm>**

## **Contact Information:**

**Elizabeth Frank**

**Office of Fair Housing & Equal Opportunity**

**Telephone: (202) 708-0614, ext. 4033**

**[Elizabeth.Frank@hud.gov](mailto:Elizabeth.Frank@hud.gov)**

**Jana L. Erickson**

**Office of General Counsel**

**Fair Housing Division**

**Telephone: (202) 708-0614, ext. 5067**

**[Jana.L.Erickson@hud.gov](mailto:Jana.L.Erickson@hud.gov)**